THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

M.A.C.M.A.Nos.380 and 2728 of 2005

COMMON ORDER:

As these two appeals are interrelated and the parties are one and the same, they are being taken up together and disposed of by this common order.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed in the O.P.

3. While M.A.C.M.A.Nos.380 of 2005 is filed by the claimants, M.A.C.M.A.No.2728 of 2005 is filed by the Tamilnadu State Transport Corporation Limited, against the order dated 11.10.2004 passed in M.V.O.P.No.194 of 2000 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur, wherein the Tribunal granted compensation of Rs.1,08,2000/- as against the claim of Rs.1,40,000/- with interest at 9% p.a., from the date of the original petition till realization, fastening 50% liability of payment of compensation on respondent Nos.1 and 2 and the remaining 50% on the third respondent.

4. The facts of these cases are as under:

The claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act'), was filed by the claimants, who are the husband and two minor children of the deceased.

First respondent is the owner of Tata Sumo (taxi cab) bearing registration No.AP 7U 6566, second respondent is its insurer and third respondent is the owner of bus bearing registration No.TN 32N 1146 of Tamilnadu State.

It is stated that on 19.11.1998 at about 3.00 p.m., while the claimants along with the deceased and others were travelling in the tata sumo from Piduguralla, Guntur District to reach Sankarapuram in

Kerala State *via* Tamilnadu State and when the tata sumo reached a turning near Kumathapuram Village, Tirunelveli District in Tamilnadu State, on Tankasi Madurai road, the drivers of both the vehicles i.e., tata sumo and bus belonging to respondent Nos.1 and 3 respectively drove the same in a rash and negligent manner and also in high speed resulting in a head on collision. In the said accident, two persons died and others received grievous injuries. Immediately, the deceased and the injured were taken to a Government Hospital at Kadayanallur and thereafter, they were shifted to Medical College Hospital, Tirunelveli. The deceased died while undergoing treatment in the said hospital. It is stated that an amount of Rs.17,000/- was spent for transporting the body of the deceased from Tirunelveli, Tamilnadu State to Piduguralla Village, Guntur District.

According to the claimants, the deceased was aged about 45 years and was hale and healthy at the time of the accident. She used to do tailoring work and earn Rs.1,500/- per month and used to spend the same for the welfare of the claimants.

5. The first respondent, who is the owner of the tata sumo, remained *ex parte.* The only contesting parties were second respondent - Oriental Insurance Company Limited with whom the tata sumo was insured and third respondent - Tamilnadu State Transport Corporation - owner of the bus.

6. The second respondent filed their written statement denying the allegations made in the O.P. and contended that they are liable to pay compensation only if a valid insurance policy is produced by the first respondent. According to the second respondent, the said vehicle has no permit to be used in the State of Tamilnadu and Kerala.

7. The third respondent – Tamilnadu State Transport Corporation filed their written statement denying the allegations made in the O.P.

and contended that the bus involved in the accident do not belong to M/s. State Express Transport Corporation, TN Ltd., Chennai but the same belonged to the Tamilnadu State Transport Corporation (Division II, Madurai), Tirunelveli and that a proper adjudication is possible only when the necessary parties are impleaded. According to third respondent, the O.P. is bad in law for non-joinder of necessary parties and mis-joinder of unnecessary parties. According to them, the driver of the bus proceeded in a slow manner on extreme left side of the road. The tata sumo, which was coming from the opposite direction in a high speed, dashed at right front side portion of the bus and that the driver of the bus also received injuries. A case was registered in Crime No.1109 of 1998 of Kadayanallur Police Station against the driver of tata sumo. According to third respondent, since the accident occurred due to rash and negligent driving of the driver of the tata sumo, the third respondent – Tamilnadu State Transport Corporation cannot be made liable to pay any compensation.

8. On the basis of the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of the Tata Sumo (Taxi Cab) A.P. 7U 6566?
2. To what compensation the petitioners are entitled and from whom?
3. To what relief?

In order to substantiate their claim, the first claimant examined himself as P.W.1 and got marked Exs.A-1 to A-4. In defence, the respondents got examined R.Ws.1 to 3 and marked Exs.B-1 to B-3, three photographs along with negatives.

9. The Tribunal, after considering the evidence produced by the claimants and the respondents, allowed the O.P. by awarding the compensation as indicated above.

10. The learned counsel for the Tamilnadu State Transport Corporation Limited (appellant in C.M.A.No.2728 of 2005) contends that they are not liable to pay any compensation for the reason that their driver is not responsible for the said accident. According to him, immediately after the accident, a report was given against the driver of tata sumo, which was registered as Crime No.1109 of 1998. Further, the Police investigated into the matter and filed a charge sheet against the driver of tata sumo who pleaded guilty before the Court and paid a fine of Rs.9,500/-.

In view of the above circumstances, the counsel tried to impress upon the Court that the driver of the bus is not responsible for the said accident. According to him, the evidence of R.W.2, driver of the bus, also goes against the version of the claimants, more so, the evidence of driver of tata sumo, who was examined as R.W.3. Hence, he seeks exemption of Tamilnadu State Transport Corporation from 50% liability in paying compensation as directed by the Tribunal.

11. On the other hand, the learned counsel for the claimants (appellants in C.M.A.No.380 of 2005) contends that the amount of compensation awarded is very less and seeks enhancement of the same. In support of his contention, he relied upon a decision of this Court in **Branch Manager, Oriental Fire and General Insurance Company vs. Dr.C.Chandra Obula Reddy**[1]. According to him, the Tribunal did not consider properly the age of the deceased while taking the suitable multiplier and also the deductions to be made while calculating the income of the deceased, who was the housewife at the time of the accident.

12. As seen from the evidence available on record, P.W.1, who was an eyewitness to the incident, deposed to the manner in which the accident took place. According to him, on the date of accident, himself, his wife and some others were travelling in the tata sumo from

Piduguralla, Guntur District to Sankarapuram, Kerala State *via* Tamilnadu State and that the accident occurred due to the rash and negligent driving of the driver of the bus. The deceased, who was travelling in the said tata sumo, received severe injuries and died while taking treatment in the hospital. In support of his claim, he marked Exs.A-1 to A-4.

13. On the other hand, R.Ws.1 and 2, who are the conductor and driver in the Tamilnadu State Transport Corporation's bus respectively, deposed that on the date of the accident, the bus was going at a slow speed and while negotiating a curve near Kumathapuram Village, tata sumo, which was coming at a high speed from opposite direction, dashed against the bus on the right side resulting in the right portion of the bus getting damaged. A case was registered against the driver of the tata sumo on the basis of a report given by R.W.1, the conductor of the bus. They filed Exs.B-1 to B-3 – three photographs along with negatives of scene of occurrence indicating the impact of the accident on the two vehicles.

14. R.W.3, who was the driver of the tata sumo, deposed that the accident took place because the bus came in a high speed and dashed the tata sumo while negotiating a curve. He received injuries in the said accident. He fell unconscious and was admitted in Government Hospital at Tamilnadu. According to him, three days after he regained conscious, he came to know about the Police registering a case against him. He filed M.V.O.P.No.492 of 2000 claiming compensation against the owner and insurer of the tata sumo.

15. The first information report was registered on the basis of a report given by the conductor of the bus. The allegations made therein indicate that when the bus was taking a turn near Kumunthapuram Village, a tata sumo coming from the opposite direction in a rash and negligent manner dashed on the right front side portion of the bus,

thereby damaging the front side portion of the bus and that the tata sumo was also damaged. Number of persons sustained injuries and they were taken to the Government Hospital.

16. The evidence of P.W.1, who was injured in the said vehicle, indicates the manner in which the accident took place.

It is no doubt true that no report was lodged either by the driver or the passengers of the tata sumo. That by itself cannot be a ground to discard the evidence of P.W.1 and conclude that the driver of the tata sumo was at fault. Exs.B-1 to B-3 photographs filed would clearly show the manner in which the accident took place and the impact of the said accident on the two vehicles. In the first blush, the contention of the learned counsel for the Tamilnadu State Transport Corporation that the Police investigated into the crime and filed charge sheet against the driver of the tata sumo appeared to be correct, but a close scrutiny of the evidence would show any amount of doubt in the said contention. It may be noticed that immediately after the accident, the driver of the tata sumo became unconscious and he was shifted to a nearby Government Hospital. Further, while all the passengers in the said vehicle were going on a pilgrimage to Kerala, the accident took place in the State of Tamilnadu at Kumathapuram Village, which is a new place to them. The inmates of the vehicle would have preferred to in getting the injured treated rather than lodging a report by searching for a Police Station. The photographs clearly indicate that both the vehicles colluded with each other and with that impact the inmates received injuries. In view of the evidence of P.W.1, vis-à-vis the evidence of R.Ws.1 to 3, it is difficult for the Court to assess the rashness and negligence on the part of both the drivers of the vehicles. Merely because the Police filed charge sheet against the driver of the tata sumo that by itself is not sufficient to conclude that the accident took place because of his rashness. In view of the evidence and contra evidence, the liability of rashness or negligence cannot be

fastened on one driver. Therefore, the findings of the Tribunal that there was head on collusion of the two vehicles resulting in grievous injuries to the inmates of the said vehicle warrants no interference.

17. Coming to the amount of compensation, which the claimants are entitled to, it is not in dispute that the deceased was housewife and was aged about 45 years at the time of the accident. The contents of the post mortem certificate, which is marked as Ex.A-3 disclose the age of the deceased as 45 years. The same is also not in dispute. P.W.1 in his evidence stated that the deceased used to attend to agricultural work along with him in agricultural fields and she also used to do tailoring work.

No evidence has been produced to show any income earned by the deceased either by doing the work of tailoring or as a labourer in the agricultural fields. However, the evidence of P.W.1 that the deceased was working as a labourer in agricultural fields is not disputed. Though he was cross examined at length, nothing useful was elicited to discard his testimony. In view of the above, the Tribunal assessed the income of the deceased at Rs.50/- per day, which would be come to Rs.1,500/- per month. Out of the said amount, 1/3rd was deducted towards personal and living expenses and the balance amount of Rs.1,000/- per month was taken as the contribution to the family.

18. The learned counsel for the claimants (appellants in C.M.A.No.380 of 2005) by relying upon the decision of the Supreme Court in **Santosh Devi vs. National Insurance Co. Ltd.,** [2] contended that deduction of 1/3rd is illegal and 1/10th has to be deducted in view of the fact that the income of the deceased was only Rs.1,500/- per month. It may be noticed that in the facts and circumstances of that case, the Supreme Court did not deduct 1/3rd because they felt that a person who was earning Rs.1,500/- per month will not spent Rs.500/- towards personal and living expenses and

contribute only Rs.1,000/- towards family. In the present case, apart from the deceased, her husband was also earning by doing agricultural work. In view of the above, the deceased would have spent some money towards her own expenses rather than contributing everything for the welfare of the family. Therefore, the Tribunal rightly took the contribution to the family as Rs.1,000/- per month.

19. The learned counsel for the claimants (appellants in C.M.A.No.380 of 2005) further contended that the Tribunal erred in applying the multiplier '9' while calculating the loss of dependency and that the suitable multiplier is '14' as per **Sarla Verma vs. Delhi Transport Corporation and another**[3]. I find force in this submission of the learned counsel.

20. Therefore, by applying the said multiplier, the total loss of dependency would come to Rs.1,68,000/- (1000 X 12 X 14). Apart from that in **Chandra Obula Reddy**'s case (supra 1), this Court while dealing with a case of death of a house wife observed that the loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of services to the family, if there was a reasonable prospect of such services being rendered freely in future but for the death. While estimating the services of the housewife, a narrow meaning should not be given to that of services, but should be construed broadly. One has to take into account the loss of the constant love and affection and also of personal care and attention by the deceased to her children, as a mother and to her husband, as a wife.

21. Taking into consideration the observations made in the above case, I feel that a sum of Rs.10,000/- shall be awarded to the claimants towards loss of love and affection. Further, a sum of Rs.5,000/- is awarded towards funeral expenses apart from awarding Rs.10,000/- towards transportation of the dead body from Tamilnadu to Piduguralla

Village, Guntur District. The first claimant is also entitled to a sum of Rs.10,000/- towards consortium. Thus, the total compensation would comes to Rs.2,03,000/- (168000+10000+5000+10000+10000).

22. Here, it is to be noted that the compensation calculated hereinabove is more than what has been claimed by the claimants.
It is well settled that the Court has got power to award the sum more than what has been claimed in spite of there being any application seeking enhancement of compensation as held in **Nagappa vs. Gurudayal Singh**[4]. It is true that in the O.P. filed by the claimants under Section 160 of the Act, the claimants claimed compensation of Rs.1,40,000/- only, but as held in **Nagappa**'s case (supra 3), in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident than the claimed. The said view was also followed in **Sanjay Batham vs. Munnalal Parihar and others**[5].

23. In view of the above findings, the claimants (appellants in C.M.A.No.380 of 2005) are entitled to a sum of Rs.2,03,000/- (Rupees two lakhs and three thousand only) towards compensation. As directed by the Tribunal, respondent Nos.1 and 2 are jointly and severally liable to pay 50% compensation and the remaining 50% shall be paid by the third respondent.

24. With regard to the interest part, while the learned counsel for the claimants (appellants in C.M.A.No.380 of 2005) seeks reduction of interest on the compensation amount awarded by the Tribunal, the claimants contended that 9% interest should be awarded on the enhanced compensation also. This Court feels it is appropriate to award only 6% interest on the enhanced compensation. Accordingly, the enhanced amount of compensation shall carry interest at 6% p.a., from the date of the judgment in the O.P. till realisation. The amount awarded is to be apportioned in the manner indicated by the Tribunal.

25. Subject to the above modifications, both the appeals are allowed in part. No order as to costs.

C.PRAVEEN KUMAR, J

26th September, 2012
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[1] 2004(4) ALD 883
[2] (2012)6 SCC 421
[3] (2009) 6 SCC 121
[4] 2003 ACJ 12
[5] 2012(2) ALD 153 (SC) = (2011) 10 SCC 665